

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888**

IN RE:

Docket No. D-06-51

Petition By Interstate Navigation Company For Authority to Borrow \$5.6 Million.

Docket No. D-06-53

Petition By Interstate Navigation Company For Approval to:

- (1) Purchase the Rhode Island Assets Of Island Hi-Speed Ferry, LLC and Lease of the M/V Athena to Island Hi-Speed Ferry, LLC;
- (2) The Elimination of all Restrictions on Interstate Navigation Company's Fast Ferry CPCN;
- (3) The Elimination of all Restrictions on Island Hi-Speed Ferry, LLC's Fast Ferry CPCN;
- (4) Transfer Of Island Hi-Speed Ferry, LLC's Fast Ferry CPCN to Interstate and Approval to Continue to Hold the Island Hi-Speed Ferry, LLC CPCN in Abeyance (dormancy); and
- (5) To Continue to Hold the Newport Leg of Interstate Navigation Company's Fast Ferry CPCN in Abeyance (dormancy).

ORDER

Whereas: On December 6, 2004, the Interstate Navigation Company, 14 Eugene O'Neill Drive, New London, Connecticut ("Interstate"), filed an application with the Rhode Island Division of Public Utilities and Carriers ("Division") seeking authority to operate as a seasonal "fast ferry" water carrier of passengers and freight between (1) Point Judith and Old Harbor, Block Island; and (2) Newport and Old Harbor, Block Island. The matter was docketed as Division Docket No. D-05-06.

Following the docketing of Interstate's application, the Division received motions to intervene from the town of New Shoreham ("New Shoreham"); the town of Narragansett ("Narragansett"); and Island Hi-Speed Ferry, LLC ("IHSF").¹ The Division's Advocacy Section ("Advocacy Section"), an indispensable party, also entered an appearance in the docket.

After a lengthy discovery phase, the Division subsequently conducted five public hearings in the docket, on June 13, 14, 15 and 22, and July 11, 2005. After briefs were submitted, the Division issued a final report and order in the docket on January 23, 2006.² In its report and order, the Division found that Interstate had adequately demonstrated that it is fit, willing and able to provide high-speed ferry services between Point Judith, Block Island (Old Harbor) and Newport. The Division additionally found that the "public convenience and necessity" required Interstate's proposed fast ferry services between Point Judith, Block Island (Old Harbor) and Newport.

Whereas: In the interest of promoting continued coexistence, the Division also identified several licensing restrictions and regulatory measures that the Division believed would facilitate IHSF's efforts to coexist with Interstate. The Division adopted these restrictions and protective measures "as an initially crafted safety net", and indicated that it would take additional steps to ensure the continued coexistence of these two water carrier companies as future circumstances warranted. Specifically, the Division's decision imposed the

¹ Interstate never objected to the intervention motions and all the movants ultimately became parties in the case.

² Order No. 18506.

following three restrictions on Interstate's approved certificate of public convenience and necessity ("CPCN"):

- a. *Interstate shall adhere to its filed plan to operate three trips per day between Point Judith and Old Harbor and three trips per day between Newport and Old Harbor;*
- b. *Interstate's three departure times from Point Judith shall be 8:15 AM, 12:20 PM and 5:30 PM; and*
- c. *Interstate is prohibited from marketing its fast ferry service to IHSF's customer base.*

Whereas: Subsequently, on April 6, 2006 Interstate filed a motion with the Division wherein Interstate requested "a one-year amendment to its fast ferry certificate..." Interstate filed the motion as a post-decision pleading in Docket No. D-05-06.

In its motion, Interstate stated as follows:

"IHSF will not be operating from Point Judith to Block Island in 2006. Instead, IHSF has agreed to lease its fast ferry vessel the M/V Athena to Interstate. Therefore, in 2006 Interstate wishes to operate a fast ferry between Point Judith and Old Harbor only. Interstate plans to fill the void created by IHSF's cessation of fast ferry service to Block Island from Point Judith by providing fast ferry service under Interstate's new CPCN. However, to fill that void, Interstate needs its CPCN amended for the summer of 2006 (1) to eliminate the restriction on the number, timing and marketing of fast ferry runs between Point Judith to Old Harbor, and (2) to hold in abeyance the Newport to Block Island leg of the new CPCN. (Conventional ferry service by Interstate between Newport and Block Island will continue). Therefore, Interstate requests that the restrictions set forth in Report & Order # 18506 be lifted and amended..."³

³ Interstate Exhibit A, Docket No. D-05-06

In support of its motion, Interstate proffered a “stipulation” that was signed by all the parties who originally participated in its original CPCN application proceeding in Docket No. D-05-06, supra. The signatories consisted of Interstate, IHSF, the Advocacy Section, New Shoreham, and Narragansett. Additionally, although not a party in the underlying case, the City of Newport also signed the agreement.⁴

Whereas: In a related filing, on April 10, 2006, IHSF filed a petition with the Division wherein it sought authority from the Division to hold its CPCN “in dormancy for a period of one year, from May 15, 2006 up to and including May 15, 2007.”⁵ The Division docketed IHSF’s petition and assigned the designation Docket No. D-06-16. In support of its motion, IHSF proffered a separate “stipulation” that was also signed by all the parties who originally participated in Interstate’s original CPCN application proceeding in Docket No. D-05-06.⁶

Whereas: Also on April 10, 2006, Interstate and IHSF filed a joint petition with the Division wherein the parties requested “...that the Division approve a Time Charter of the Motor Vessel *Athena* from IHSF to Interstate, for the period May 24, 2006 through October 11, 2006.”⁷ The petition was filed pursuant to the provisions of R.I.G.L. §39-3-24. The Division docketed the joint petition and assigned the designation Docket No. D-06-17. In further support of their joint petition, Interstate and IHSF proffered a separate “stipulation” that was again

⁴ Interstate Exhibit C, Docket No. D-05-06.

⁵ IHSF Exhibit 1, Docket No. D-06-16.

⁶ IHSF Exhibit 2, Docket No. D-06-16.

⁷ Joint Exhibit 1, Docket No. D-06-17.

signed by all the parties who originally participated in Interstate's original CPCN application proceeding in Docket No. D-05-06.⁸

Whereas: Due to the obvious connections between the three filings and in the interest of administrative economy, the Division consolidated the three filings into one adjudicative proceeding. A consolidated "Notice of Public Hearing" was published in the *Providence Journal* on April 21, 2006 and the Division conducted a public hearing on May 1, 2006. No one appeared at the hearing in opposition to the motion and petitions filed by Interstate and IHSF.

The Division subsequently found the foregoing motion and petition filings in the public interest and approved each, as filed, through a report and order issued on May 5, 2006.⁹

Whereas: Subsequently, on August 25, 2006, Interstate filed a petition for approval to borrow \$5.6 Million from the Washington Trust Company ("WTC"). The petition was filed in accordance with the requirements contained in R.I.G.L. §39-3-15, et. seq. The matter was docketed as Division Docket No. D-06-51.

In its petition, Interstate explained that the requested borrowing was necessary in order to facilitate Interstate's proposed purchase of IHSF's Rhode Island fast ferry business. The proceeds from this loan were to be used by Interstate to purchase the entire Rhode Island operation of IHSF, which includes the purchase of the *M/V Athena*, the IHSF CPCN to operate between Point Judith and Block Island (New Harbor), the IHSF customer list, the IHSF berthing permit

⁸ Joint Exhibit 3, Docket No. D-06-17.

⁹ See Order No.18597.

in Point Judith, and a perpetual non-compete agreement, at a total cost of \$5,612,500.¹⁰

Whereas: On August 31, 2006, Interstate filed another petition, in which it aggregately requested the following additional approvals:

1. Interstate requested approval under R.I.G.L. §§39-3-24 and 39-3-25 of Interstate's purchase of IHSF, including, but not limited to, the M/V Athena, the IHSF CPCN, and all other assets of IHSF for a sum of \$5,612,500.¹¹

2. Observing that because IHSF will no longer be operating a high speed ferry from Point Judith to Block Island, and because the restrictions imposed on Interstate's fast ferry CPCN were intended to protect IHSF, Interstate also requested the elimination of all restrictions on Interstate's fast ferry CPCN, including, but not limited to, restrictions relating to scheduling and marketing;¹²

3. Additionally observing that because the restrictions on IHSF's fast ferry CPCN were imposed to protect Interstate, the lifeline carrier, and because IHSF would no longer be operating, and Interstate would now own IHSF's fast ferry CPCN, Interstate opined that the restrictions were no longer necessary and should be eliminated;¹³

4. Interstate also requested that IHSF's fast ferry CPCN be transferred to Interstate and that the IHSF CPCN being transferred (Point Judith to New Harbor) continue to be held in abeyance (dormancy);¹⁴ and

¹⁰ Id., p. 3.

¹¹ Interstate Exhibit 1 (Docket No. D-06-53), pp. 1-2.

¹² Id., p. 2.

¹³ Id.

¹⁴ Id.

5. Interstate requested that the Newport leg of its fast ferry CPCN continue to be held in abeyance (dormancy).¹⁵

Whereas: Due to the obvious connections between the two filings and in the interest of administrative economy, the Division consolidated the two filings into one adjudicative proceeding. A consolidated “Notice of Public Hearing” was published in the *Providence Journal* on September 11, 2006 and the Division conducted a public hearing on October 2, 2006.

On the morning of the public hearing, the parties jointly proffered a stipulated agreement that addressed each of the issues presented in these consolidated dockets. The agreement was executed by Interstate, IHSF and the Advocacy Section.¹⁶ The terms and conditions of the stipulated agreement are, in pertinent part, provided below:

Section 1. *Interstate may obtain financing in the amount of \$5,600,000 from the Washington Trust Company.*

Section 2. *Interstate may purchase the Rhode Island assets of IHSF, including: the M/V Athena, customer list, covenant not to compete, goodwill, CPCN, and berthing permit, for the total purchase price of \$5,612,500, utilizing a loan furnished by the Washington Trust Company. The terms of the loan are as described in the Washington Trust Commitment Letter and Term Sheet submitted in Docket D-06-51. Interstate may also charter the M/V Athena for November 15, 2006, to May 1, 2007, at \$1,285 per day.*

Section 3. *IHSF’s CPCN will be transferred to Interstate and merged with the Interstate high speed ferry CPCN to authorize the provision of high speed ferry services by Interstate between Point Judith and Newport to any Block Island termini, including Old Harbor and New Harbor. Because Interstate would not be in a financial or operational position to commence a Newport high speed*

¹⁵ Id.

¹⁶ Joint Exhibit 1 (Docket Nos. D-06-51 and D-06-53).

service until the summer of 2009 at the earliest, Interstate's combined high speed ferry CPCN will continue to be held in abeyance with respect to the Newport leg of its fast ferry service until October 31, 2008. However, Interstate shall be required to report to the Division by October 31 of each year as to the status of its plans to provide high speed service between Newport and Block Island. The continued authorization of that service on the CPCN will be decided after Interstate files its October 31, 2008, report, and annually thereafter. Interstate's combined high speed ferry CPCN shall be without restriction with respect to furnishing services between Point Judith and Block Island except that it shall be required, barring extraordinary circumstances, to provide services commencing no later than July 7 and concluding no earlier than Labor Day of each year. Interstate's proposed schedule and termini for all fast ferry services, and any modifications thereto, shall be provided to the Division for review at least 45 days prior to the effective date of the scheduled services.

Section 4. *The Parties believe that the maintenance of safe and reliable year round service to Block Island at reasonable rates for passengers, vehicles and freight is of critical importance. The provision of high speed ferry services provides economic benefits to Block Island as well as benefits to customers who use that service. However, the Parties also agree that the provision of high speed service by competitors has posed, and would continue to pose, risks to the profitability of Interstate and its ability to maintain safe and reliable year round traditional service to Block Island at reasonable rates for passengers, vehicles, and freight. The Parties are confident that the proposed transaction can mitigate such risks.*

Nevertheless, the Parties recognize that the proposed transaction is not without its own risks, including, but not limited to, generation of adequate revenues by the high speed service to cover the costs of that service (including the interest and principal repayments on approximately \$5.6 million of additional debt). Therefore, to protect the year round traditional service to Block Island at reasonable rates for passengers, vehicles, and freight, Interstate agrees that any losses incurred from the operation of high speed service will not affect the year round service, or rates, to Block Island for passengers, vehicles, or freight, unless the Public Utilities Commission should direct otherwise.

Section 5. *This Stipulation and Settlement should not be interpreted to restrict the rights of any party to recommend a particular treatment of the profits from the operation of high speed operations for ratemaking purposes or to restrict the authority of the Public Utilities Commission with regard to the treatment of the profits from the high speed operations for ratemaking purposes.*¹⁷

Whereas: After carefully examining the record evidence, including the settlement agreement between the parties, the Division found that approving the instant petitions, as modified by the settlement agreement between the parties, would be reasonable and in the interest of ratepayers.¹⁸ The Division, however, expressed a few concerns that it determined warranted some modifications to the approvals in issue.

Regarding the issue of whether the Division should relax the restrictions currently attached to IHSF's and Interstate's CPCNs, the Division found that it "is important to preserve the nature of luxury high-speed ferry service, vis a vis the service provided by Interstate's conventional slower speed ferries, by maintaining the following restrictions: (1) that the vessel(s) be capable of operating comparatively smoothly and quietly with a service speed of approximately 28 knots; (2) that services continue to include advanced ticketing and guaranteed seating; and (3) that amenities like airline seating, wall-to-wall carpeting, climate control (including A/C) and galley services continue to be provided."¹⁹

¹⁷ Joint Exhibit 1 (Docket Nos. D-06-51 and D-06-53).

¹⁸ See Order No. 18728, issued on October 3, 2006.

¹⁹ Id., p. 21. The Division also noted that these requirements are consistent with the Division's previous order in 02-MC-56 (Order No. 17081, issued on 8/2/02).

The Division was also willing to grant Interstate's request to hold its Newport authority in abeyance through the 2008 operating season, but held that it would "not agree to limit its scheduled review (after October 31, 2008) to only a determination of whether that aspect of the authority contained in Interstate's CPCN ought to be continued or not." Instead, the Division held that it would "address the entirety of the authority conferred in Interstate's CPCN, as the Division originally granted Interstate's high-speed ferry CPCN based on the totality of the fast ferry services being proposed at the time, which prominently included high-speed ferry services between Newport to Block Island".²⁰ The Division further held that it would also investigate the status of Interstate's originally planned larger car/freight/passenger fast ferry at the same time, which was another influential factor in the granting of Interstate's fast ferry CPCN.

The Division additionally found that it would be "unreasonable to permit Interstate to shelf its 'New Harbor' authority in perpetuity or never utilize the second fast ferry authorized under IHSF's CPCN" and, accordingly, held that it would "examine the propriety of allowing Interstate to retain the authority realized through the transfer of IHSF's CPCN when it conducts its evaluation of Interstate's dormant Newport authority (and larger vessel status) sometime after the 2008 operating season."²¹

Whereas: On October 24, 2008, Interstate filed compliance testimony in consolidated Docket Nos. D-06-51 and D-06-53, relating to all the open issues, in

²⁰ Id., p. 21-22.

²¹ Id., p. 22.

which it recommended that the Division “keep everything status quo for at least another three years...”

Whereas: The Division finds that the public interest requires a current reexamination of the approvals detailed above in order to determine whether the Division ought to modify and/or revoke any authority currently conferred through Interstate’s fast ferry CPCN.

Accordingly, it is

(19477) ORDERED:

That the Division Clerk is hereby instructed to reopen the instant consolidated dockets and schedule, as soon as practicable, a public hearing for the purpose of examining Interstate’s compliance actions with the commitments it made in the dockets identified herein and, in relation thereto, for the purpose of determining whether the Division ought to modify and/or revoke any authority currently conferred through Interstate’s fast ferry CPCN.

Dated and Effective at Warwick, Rhode Island on October 31, 2008.

John Spirito, Jr., Esq.
Hearing Officer

APPROVED:

Thomas F. Ahern
Administrator